special defenses or proof requirements applying to perjury prosecutions: (1) the questions leading to perjured testimony must not be so vague that they could not reasonably be understood and (2) the common law "two-witness" rule must be satisfied in proving perjury. Based on the results of our investigation, we concluded that we could not be confident that a jury would be convinced beyond a reasonable doubt as to either area of testimony under consideration. We therefore declined to commence prosecution of perjury charges against Secretary Babbitt.

1. There Is Insufficient Evidence to Prove that Babbitt Perjured Himself in Testifying About What He Said to Paul Eckstein About Harold Ickes's Involvement in the Hudson Casino Proposal

A primary focus of the hearing conducted on Oct. 30, 1997, by the Senate Committee on Governmental Affairs was the meeting between Secretary Babbitt and Paul Eckstein, and, in particular, what Babbitt said to Eckstein about Ickes's involvement in the Hudson casino proposal.[785] Eckstein's recollection of his meeting with Babbitt was already a matter of public record. In an affidavit filed in a civil lawsuit in January 1996, Eckstein stated that Babbitt told him that Ickes "had called the Secretary and told him that the decision had to be issued that day."[786] In August 1996, Babbitt wrote a letter to Sen. McCain that seemed to be a complete denial of having invoked Ickes's name in his meeting with Eckstein.[787] Eckstein repeated his

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[784](...continued)
such oath states or subscribes any material matter which he does not believe to be true . . . is guilty of perjury . . . ."); *see also United States v. Dunnigan*, 507 U.S. 87, 94 (1993).

[785]*See* S. Rep. No. 105-167, vol. 2, at 3167 (1998).

[786]Eckstein Affidavit at 6.

[787]This letter could not form the basis for a federal false statement charge. *See* n. 835, (continued...)